HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 885 OF l995.

DATE OF DECISION: 12.12.1995.

- -
KHUMANSING DABHSING CHAUHAN
Vs.
STATE OF GUJARAT
- -

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE K. J. VAIDYA,

AND

THE HONOURABLE Mr.JUSTICE M. H. KADRI.

1. Whether Reporters of Local Papers
may be allowed to see the Judgment? YES.

2. To be referred to the Reporter or
not ? YES.

3. Whether Their Lordships wish to see
the fair copy of Judgment ? NO.

4. Whether this case involves a subst-
-antial question of law as to the
interpretation of the Constitution
of India, l950 or any order made
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5. Whether it is to be circulated to
the Civil Judges ? NO.

Mr.M.R.Vyas, Advocate (appointed) for the Appellant.

Mr.M.A.Bukhari, APP, for the Respondent.

CORAM: K.J.VAIDYA & M.H.KADRI, JJ.
(12th December, 1995)

ORAL JUDGMENT. (per VAIDYA, J.)

Khumansing Dabhsing Chauhan, by this appeal has brought under challenge the impugned judgment and order dated l6.8.l995, rendered in Sessions Case No. 82 of l992 passed by the learned Additional Sessions Judge, Panchmahals at Godhra, wherein, on his coming to be tried alongwith 3 others for the alleged offences punishable under Ss.302, 323 and 34 of the I.P.Code and S.135 of the Bombay Police Act, 1951, was, at the end of the trial, convicted for the same and sentenced to R.I. for life and to pay fine of Rs.1,000/- and in default of payment of fine to undergo further R.I. for 2 months. The other three co-accused of the present appellant were acquitted.

2. According to the prosecution, the incident in question took place at Village Kalantra (Kalol Taluka) on 2.7.l990 at l9.40 hours, wherein Khumansing Dabhsing Chauhan - the present appellant, and three others (family members), armed with knife, sticks, etc. attacked PW 2, Bai Sharda, wherein in the process on Ganpat, a boy aged 12 intervening, was stabbed to death. This incident was seen by three persons, viz. (1) PW 2 Shardaben Ajabsing, who happens to be the mother of deceased Ganpat, (2) PW 4 Vakhatsing Somabhai, who happens to be the uncle of the deceased, and (3) PW 5 Bhemabhai Mathurbhai, a neighbour. According to PW 2, she had a shop of vegetables and provisions on the otta of her house. On the day of the incident, when Khumansing demanded goods on credit, she refused to give. Thereafter, after about l0 minutes, Khumansing, Kabhai Dabhai, Rangeet Kabhai and Raju Kabhai came and attacked PW 2. At that time Kabhai Dabhai (acquitted) picking up quarrel inquired as to why she did not give goods on credit. Thereafter they started giving stick blows. Raju Kabhai and Rangeet Kabhai caught hold of her while Kabhai Dabhai and Khumansing beat her. When they were so beating PW 2, Ganpat intervened to save his mother PW 2, and at that time, Khumansing gave a knife blow on the left side of the abdomen of Ganpat, as a result of which

Ganpat fell down in the lap of PW 2. Thereafter all the accused made good their escape. Immediately thereafter, the injured was taken to the hospital, but on the way he succumbed to the injury and passed away. Thereafter PW 2 gave complaint Exh.34 before the PSI, Badmalia at Vejalpur Police Station which came to be recorded on the very day at 23.45 hours. On the basis of this information, after the investigation was over, all the 4 accused persons came to be charge-sheeted to stand trial for the aforesaid alleged offences before the Sessions Court at Godhra, where they pleaded not guilty and claimed to be tried. The trial court, after duly appreciating the prosecution evidence brought on record, acquitted the other three accused and convicted the present appellant as stated above in paragraph 1 of this judgment, giving rise to the present appeal.

3. Mr.M.R.Vyas, Ld.Advocate, (appointed) appearing for the appellant, at the time of admission had extensively made use of the record and proceedings, and we have heard him quite at length for more than an hour. The main thrust of the argument of Mr.Vyas is that there was only one blow given to Ganpat and in that view of the matter, the offence would squarely fall within the ambit of S.304 Part-I of the I.P.Code. In support of this contention, Mr.Vyas has relied upon the decision of the Supreme Court rendered in the case of KARAM SINGH vs. STATE OF PUNJAB, reported in 1994 SCC (Cri.) 64. On the basis of this submission, Mr.Vyas ultimately urged that this matter could be finally disposed of by recording conviction under Section 304 Part-I of I.P.Code sentencing accused to five years.

4. Now, there is indeed no doubt that in the present case only one blow is given to Ganpat. But then merely because only one blow is given, that by itself is not a straight-jacket ground, a magic formula which will automatically neutralise the gravity and seriousness of the offence under S.302 I.P.Code, toning it down to fall within the narrow fold of S.304 I.P.Code in all cases irrespective of facts and circumstances of the particular case. There are cases and cases wherein only one blow is given and yet depending upon the overall attending facts and circumstances of that particular case the person can be convicted either under S.302 I.P.Code or under S.304 Part-I or under S.304 Part-II of the I.P.Code as the case is made out to be. Accordingly, in the instant case, on going through the prosecution evidence on record, there is no material worth the name to show that there was a sudden quarrel and in the heat of moment, without taking any undue advantage of the situation and/or acting in any cruel manner, or in self-defence the accused picked up a weapon like knife just lying round about the corner and gave a blow with it. Had that been such a case, then Mr.Vyas would have been certainly right in contending that the case falls within the perview of S.304 part-I of I.P.Code. In

fact, if we look to the facts of the present case, the appellant had earlier gone to the shop of PW 2, and demanded some goods on credit. This was not given. This enraged the appellant Khumansing, who went back to his house and returned with three other persons armed with knife and sticks to bully PW 2, picked up quarrel with her and in the process while attacking her when Ganpat intervened to save her, he was stabbed to death. But as against this, Mr.Vyas further submitted that from mere stabbing with knife, no conclusion about intention to murder Ganpat on the part of the accused could be drawn, more particularly when second blow was not given. He submitted that Ganpat intervened unexpectedly and came to receive the blow. According to Mr.Vyas had indeed Ganpat not intervened, he would not have been murdered. Now, this argument is hardly tenable. The intention is not writ large on the face of the person. Not the conclusion thereof could be drawn because more than one blows were not inflicted upon the person of the deceased. It has to be gathered from the attending circumstances. If a person makes unjust demand for giving goods on credit and on being refused goes home enraged, comes back with other three persons determined armed with knife in particular and other weapons, picks up quarrel and in the process gives stab blow to any person which is sufficient in the ordinary course of nature to cause death, and there is nothing indeed in the cross-examination to show that the blow in question accidentally fell on the abdomen, it is indeed difficult to understand as to how Mr.Vyas is able to spell out that the appellant had no intention to kill the deceased boy !! In fact, the act coupled with the circumstances is an intrinsic proof of the manifest intention of the accused. To analyse the alleged facts situation, in the instant case when a person goes to the shop, unjustifiably demands goods on credit, when refused tries to bully the vendor with show of force, picks-up the quarrel, going armed with knife in association of other three accused and gives a knife blow on as vital a part as abdomen, and injured succumbs to injury almost immediately, what else it is than the murder ? The intention was to cause injury, which is found to be sufficient in the ordinary course of nature to cause death. If indeed there was no intention to cause death, there was no reason firstly to come armed with knife, and secondly, thereafter to use the same. Ganpat could have been given stick blow. Accordingly, in facts and circumstances of the case, we have indeed no doubt in our mind that this is not a case wherein Mr.Vyas can successfully steer-clear of offence punishable under S.302 to one under S.304 part-I, which is comparatively a minor offence. Even otherwise, in the facts and circumstances of the case wherein accused trying to bully gives knife blow causing fatal injury on face of it bringing about immediate death of the injured, he cannot claim even the remotest sympathy. The decision of the Supreme Court rendered in the case of KARANSINGH vs. STATE OF PUNJAB (supre) relied upon by Mr.Vyas in our

respectful opinion, is not applicable in the facts and circumstances of the case.

5. Mr.Vyas, not at all frustrated with the finding that the court was not inclined to admit the matter, submitted that looking to the nature of injury, if some immediate medical treatment was given, life of Ganpat in all probabilities could have been saved, and in this view of the matter also, this appeal merits admission. Now this argument of Mr.Vyas has indeed no substance. The reason for this is that the injury in question is fatal wnough to be self-eloquent. From the evidence of PW 1 Medical Officer Dr.Sunil Nagori and the postmortem notes, it is indeed very clear that the deceased had received the following injuries:

(1) A stab wound over left abdomen about 3 cms. away from umbilicus slightly oblique about 2 cms. x 1/2 cm. Edges of the wound were clean-cut.

(2) A piece of fascia came out from the wound.

(3) On opening the abdomen, & large intestine, the wound was about 2 cms. x 1/2 cm. This wound coincided with external wound.

(4) Due to injury to intestine and blood vessel, huge amount of blood came out in the abdominal cavity.

Not only that but as prosecution evidence further shows, after Ganpat was inflicted knife blow, he was taken to the hospital, and on way he expired. Further still, the Explanation (2) to S.299 of the I.P.Code, which pertains to 'culpable homicide' is clear enough to destroy the argument of Mr.Vyas, which reads as under :

Explanation (2): Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

This explanation is a fitting reply to the argument of Mr.Vyas which is advanced obviously not being aware of this provision in the I.P.Code. No other and further point was urged by Mr.Vyas to reverse the impugned order of conviction and sentence.

6. We are indeed quite conscious of the fact that we are at the admission stage, and ordinarily the appeal should not be disposed of summarily in limine if there is some argueable case, more particularly when the sentence imposed is life imprisonment, however at the same time after carefully examining the record once it is crystal clear that the order of conviction is based on quite dependable evidence, on sound reasoning, then this court is certainly justified in dismissing the appeal summarily in-limine. It was for this reason that we have satisfied ourselves as to whether Mr.Vyas has gone through the record and proceedings received from the trial court. Not only that, but for that, we have given a patient hearing to Mr.Vyas, and it is only after the careful consideration of all the facts and circumstances of the case, that we feel that no case worth the name is made out by Mr.Vyas to admit the matter, despite his frantic efforts to salvage the situation in favour of the appellant-accused. We have been carefully taken through the reasons for conviction and sentence given by the trial Court and we must say that the same are cogent, convincing and reliable enough to take any exception to the ultimate order of conviction under S.302 of the I.P.Code. In that view of the matter, there is no alternative left with this court, but to dismiss this appeal.

7. In the result, this appeal fails and is dismissed summarily. Impugned judgment and order of conviction and sentence poassed by the trial court is hereby confirmed. We are happy to state that in this appointed matter, Mr.Vyas has taken immense interest to the extent even he has also prayed for leave to appeal to the Supreme Court. However, having regard to the facts and circumstances of the case, there is indeed nothing special, i.e. there is no substantial question of law involved in this case to grant leave to appeal to the Supreme Court. Rather the case is of simple appreciation of evidence and in that view of the matter, we refuse leave. At the same time, the appellant would be at liberty to move the Supreme Court of his own, if he so desires. A copy of this judgment accordingly be immediately delivered to the appellant-accused in jail so as to enable him to take up further appropriate proceedings before the Supreme Court if he so desires.

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